

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 456

Introduced by Assembly Member Emmerson

February 24, 2009

~~An act relating to state government.~~ *An act to amend Sections 1695, 1695.1, 1695.5, 1695.6, 1696, 1697, 1698, and 1699 of, and to add Section 1699.5 to, the Business and Professions Code, relating to dentistry.*

LEGISLATIVE COUNSEL'S DIGEST

AB 456, as amended, Emmerson. ~~State agencies: period review.~~
~~Dentistry: diversion program.~~

The Dental Practice Act provides for the licensure and regulation of dentists by the Dental Board of California. The act requires the Dental Board of California to establish and administer a diversion program for the rehabilitation of licensees whose competency is impaired due to the abuse of drugs or alcohol, and imposes certain duties on diversion evaluation committees and the program manager related to accepting or denying licensees into, or terminating licensees from, the program, reviewing and designating treatment facilities, reviewing licensee participation, and performing other related duties. Existing law requires the board to close any investigation of a licensee whose investigation is based primarily on the self-administration or possession of certain controlled substances or drugs if the licensee enters and successfully completes a diversion program, and requires the reopening of the investigation upon withdrawal or termination from the program. Existing law requires that all participating licensees sign an agreement of understanding that withdrawal or termination from the diversion

program at a time when a committee determines that the licensee is a threat to the public's health and safety shall result in the use of the licensee's diversion treatment records in a disciplinary or criminal proceeding. Existing law authorizes the program manager to request execution of a similar statement of understanding that alleged violations of the act by a licensee entering a diversion program may still be investigated. Existing law authorizes a committee to convene public meetings in closed sessions if considering reports pertaining to licensees requesting or participating in a diversion program and only to the extent necessary to protect the privacy of a licensee. Existing law requires a licensee who requests participation in a diversion program to agree to cooperate with the treatment program designed by the committee and to bear all costs of the program, unless the cost is waived by the board.

This bill would declare the intent of the Legislature that the diversion program established by the Dental Board of California be implemented as a monitoring program for licensees whose participation is a component of a probationary or disciplinary action. The bill would delete the requirement that the board close investigations of licensees who self-administer or possess controlled substances or drugs and who enter and successfully complete a diversion program, and instead authorize the board to determine when to close or reopen investigations of those licensees, as specified. The bill would authorize a diversion evaluation committee to report to the board's enforcement program any licensee who is denied admission into, or terminated from, the diversion program, and who is deemed by the committee to present a threat to the public or his or her own health and safety. The bill would authorize the use of that licensee's diversion records in any disciplinary or criminal proceeding, and would delete the provisions that require or authorize the execution of a statement of understanding. The bill would also require the diversion evaluation committee to report to the board's enforcement program certain licensees engaging in acts of substantial noncompliance, as determined by the diversion evaluation committee, and would authorize the use of those licensees records for purposes of discipline, as specified. The bill would also expand the committee's authority to convene a closed session meeting as applied to matters relating to a licensee requesting or participating in a diversion program, and would require a waiver of licensee confidentiality under certain circumstances, including upon filing by the licensee of a lawsuit against the board relating to the diversion

program. The bill would toll the statute of limitations for filing an accusation against a licensee during the time period a licensee is participating in the diversion program, and would delete the authority of the board to waive costs attributed to a licensee participating in a program. The bill would also make other nonsubstantive, technical changes to related provisions.

~~Existing law authorizes the creation of various state agencies.~~

~~This bill would state the intent of the Legislature to enact legislation establishing a periodic review of all state agencies.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1695 of the Business and Professions*
2 *Code is amended to read:*

3 1695. It is the intent of the Legislature that the *Dental Board*
4 of ~~Dental Examiners of~~ California seek ways and means to identify
5 and rehabilitate ~~licentiates~~ licensees whose competency may be
6 impaired due to abuse of, or dependency on, dangerous drugs or
7 alcohol, so that ~~licentiates~~ licensees so afflicted may be treated
8 and returned to the practice of dentistry in a manner ~~which~~ that
9 will not endanger the public health and safety. It is also the intent
10 of the Legislature that the *Dental Board of Dental Examiners of*
11 California shall implement this legislation in part by establishing
12 a diversion program as *both* a voluntary alternative approach to
13 traditional disciplinary actions *and as a monitoring program for*
14 *licensees whose participation is a component of a probationary*
15 *or disciplinary action.*

16 SEC. 2. *Section 1695.1 of the Business and Professions Code*
17 *is amended to read:*

18 1695.1. As used in this article:

19 (a) “Board” means the *Dental Board of Dental Examiners of*
20 California.

21 (b) “Committee” means a diversion evaluation committee
22 created by this article.

23 (c) “Program manager” means the staff manager of the diversion
24 program, as designated by the executive officer of the board. The
25 program manager shall have background experience in dealing
26 with substance abuse issues.

1 SEC. 3. *Section 1695.5 of the Business and Professions Code*
2 *is amended to read:*

3 1695.5. (a) The board shall establish criteria for the acceptance,
4 denial, or termination of ~~licentiates~~ *licensees* in a diversion
5 program. Unless ordered by the board as a condition of ~~licentiate~~
6 ~~disciplinary~~ *probation or other disciplinary action*, only those
7 ~~licentiates~~ *licensees* who have voluntarily requested diversion
8 treatment and supervision by a committee shall participate in a
9 diversion program.

10 (b) A ~~licentiate~~ *licensee* who is not the subject of a current
11 investigation may self-refer to the diversion program on a
12 confidential basis, except as provided in subdivision (f).

13 (c) A ~~licentiate~~ *licensee* under current investigation by the board
14 may also request entry into the diversion program by contacting
15 the board's Diversion Program Manager. The Diversion Program
16 Manager may refer the ~~licentiate~~ *licensee* requesting participation
17 in the program to a diversion evaluation committee for evaluation
18 of eligibility. ~~Prior to authorizing a licentiate to enter into the~~
19 ~~diversion program, the Diversion Program Manager may require~~
20 ~~the licentiate, while under current investigation for any violations~~
21 ~~of the Dental Practice Act or other violations, to execute a~~
22 ~~statement of understanding that states that the licentiate understands~~
23 ~~that his or her violations of the Dental Practice Act or other statutes~~
24 ~~that would otherwise be the basis for discipline, may still be~~
25 ~~investigated and the subject of disciplinary action.~~

26 (d) If the reasons for a current investigation of a ~~licentiate~~
27 ~~licensee~~ are based primarily on the self-administration of any
28 controlled substance or dangerous drugs or alcohol under Section
29 1681 ~~of the Business and Professions Code~~, or the illegal
30 possession, prescription, or nonviolent procurement of any
31 controlled substance or dangerous drugs for self-administration
32 that does not involve actual, direct harm to the public, the board
33 ~~shall~~ *may* close the investigation without further action if the
34 ~~licentiate~~ *licensee* is accepted into the board's diversion program
35 and successfully completes the requirements of the program. If *an*
36 ~~investigation is closed and the licentiate~~ *licensee* withdraws or is
37 terminated from the program by a diversion evaluation committee,
38 and the termination is approved by the program manager, the
39 investigation ~~shall~~ *may* be reopened and disciplinary action
40 imposed, if warranted, as determined by the board.

1 (e) Neither acceptance nor participation in the diversion program
2 shall preclude the board from investigating or continuing to
3 investigate, or taking disciplinary action or continuing to take
4 disciplinary action against, any ~~licentiate~~ licensee for any
5 unprofessional conduct committed before, during, or after
6 participation in the diversion program.

7 (f) ~~All licentiates shall sign an agreement of understanding that~~
8 ~~the withdrawal or termination from the diversion program at a time~~
9 ~~when a diversion evaluation committee determines the licentiate~~
10 ~~presents a threat to the public's health and safety shall result in the~~
11 ~~utilization by the board of diversion treatment records in~~
12 ~~disciplinary or criminal proceedings. If a diversion evaluation~~
13 ~~committee determines that a licensee, who is denied admission~~
14 ~~into the diversion program or terminated from the diversion~~
15 ~~program, presents a threat to the public or his or her own health~~
16 ~~and safety, the committee shall report the name and license number~~
17 ~~of the licensee, along with a copy of all diversion records for that~~
18 ~~licensee, to the board's enforcement program. The board may use~~
19 ~~any of the records it receives under this subdivision in any~~
20 ~~disciplinary or criminal proceeding.~~

21 (g) Any ~~licentiate~~ licensee terminated from the diversion
22 program for failure to comply with program requirements is subject
23 to disciplinary action by the board for acts committed before,
24 during, and after participation in the diversion program. A ~~licentiate~~
25 licensee who has been under investigation by the board and has
26 been terminated from the diversion program by a diversion
27 evaluation committee shall be reported by the diversion evaluation
28 committee to the board.

29 SEC. 4. Section 1695.6 of the Business and Professions Code
30 is amended to read:

31 1695.6. A committee created under this article operates under
32 the direction of the program manager. The program manager has
33 the primary responsibility to review and evaluate recommendations
34 of the committee. Each committee shall have the following duties
35 and responsibilities:

36 (a) To evaluate those ~~licentiates~~ licensees who request to
37 participate in the diversion program according to the guidelines
38 prescribed by the board and to make recommendations. In making
39 the recommendations, a committee shall consider the
40 recommendations of any ~~licentiates~~ licensees designated by the

1 board to serve as consultants on the admission of the ~~licentiate~~
2 ~~licensee~~ to the diversion program.

3 (b) To review and designate those treatment facilities to which
4 ~~licentiates~~ ~~licensees~~ in a diversion program may be referred.

5 (c) To receive and review information concerning a ~~licentiate~~
6 ~~licensee~~ participating in the program.

7 (d) To consider in the case of each ~~licentiate~~ ~~licensee~~
8 participating in a program whether he or she may with safety
9 continue or resume the practice of dentistry.

10 (e) To perform such other related duties, under the direction of
11 the board or program manager, as the board may by regulation
12 require.

13 *SEC. 5. Section 1696 of the Business and Professions Code is*
14 *amended to read:*

15 1696. Notwithstanding the provisions of Article 9 (commencing
16 with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title
17 2 of the Government Code, relating to public meetings, a committee
18 may convene in closed session to consider ~~reports pertaining~~
19 ~~matters relating to any~~ ~~licentiate~~ ~~licensee~~ requesting or
20 participating in a diversion program. ~~A committee shall only~~
21 ~~convene in closed session to the extent that it is necessary to protect~~
22 ~~the privacy of such a licentiate meeting that will be convened~~
23 ~~entirely in closed session need not comply with Section 11125 or~~
24 ~~11126.3 of the Government Code.~~

25 *SEC. 6. Section 1697 of the Business and Professions Code is*
26 *amended to read:*

27 1697. Each ~~licentiate~~ ~~licensee~~ who requests participation in a
28 diversion program shall agree to cooperate with the treatment
29 program designed by the committee and approved by the program
30 manager and to bear all costs related to the program, ~~unless the~~
31 ~~cost is waived by the board.~~ Any failure to comply with the
32 provisions of a treatment program may result in termination of the
33 ~~licentiate's~~ ~~licensee's~~ participation in a program.

34 *SEC. 7. Section 1698 of the Business and Professions Code is*
35 *amended to read:*

36 1698. (a) After the committee and the program manager in
37 their discretion have determined that a ~~licentiate~~ ~~licensee~~ has been
38 rehabilitated and the diversion program is completed, the
39 committee shall purge and destroy all records pertaining to the
40 ~~licentiate's~~ ~~licensee's~~ participation in a diversion program.

1 (b) Except as authorized by subdivision (f) of Section 1695.5
2 *and subdivisions (c) and (d)*, all board and committee records and
3 records of proceedings pertaining to the treatment of a ~~licensee~~
4 *licensee* in a program shall be kept confidential and are not subject
5 to discovery or subpoena.

6 (c) *Notwithstanding any other provision of law, the diversion*
7 *evaluation committee shall report to the board's enforcement*
8 *program, for any licensee who is participating in the diversion*
9 *program as a result of his or her license being placed on probation*
10 *or as a result of a referral related to a board investigation pursuant*
11 *to subdivision (d) of Section 1695.5, all acts of substantial*
12 *noncompliance by the licensee as determined by the diversion*
13 *evaluation committee. The report shall be made no more than 24*
14 *hours after the diversion evaluation committee makes its*
15 *determination. If that licensee does not successfully complete the*
16 *diversion program, all diversion records for that licensee shall be*
17 *provided to the board's enforcement program and may be used at*
18 *the board's discretion to discipline the licensee.*

19 (d) *A licensee shall be deemed to have waived any rights granted*
20 *by any law or regulation relating to confidentiality under the*
21 *program, if he or she does any of the following:*

22 (1) *Presents information relating to any aspect of the diversion*
23 *program during any stage of the disciplinary process subsequent*
24 *to the filing of an accusation, statement of issues, or petition to*
25 *compel an examination pursuant to Article 12.5 (commencing with*
26 *Section 820) of Chapter 1. The waiver under this paragraph shall*
27 *be limited to information necessary to verify or refute any*
28 *information disclosed by the licensee.*

29 (2) *Files a lawsuit against the board relating to any aspect of*
30 *the diversion program.*

31 (3) *Claims in defense to a disciplinary action, based on a*
32 *complaint that led to the licensee's participation in the diversion*
33 *program, that he or she was prejudiced by the length of time that*
34 *passed between the alleged violation and the filing of the*
35 *accusation. The waiver under this paragraph shall be limited to*
36 *information necessary to document the length of time the licensee*
37 *participated in the diversion program.*

38 SEC. 8. *Section 1699 of the Business and Professions Code is*
39 *amended to read:*

1 1699. The board shall provide for the representation of any
2 person making reports to a committee or the board under this article
3 in any action for defamation for reports or information given to
4 the committee or the board regarding a ~~licentiate's~~ licensee's
5 participation in the diversion program.

6 *SEC. 9. Section 1699.5 is added to the Business and Professions*
7 *Code, to read:*

8 *1699.5. Notwithstanding Section 1670.2, the statute of*
9 *limitations relating to the filing of an accusation against a licensee*
10 *shall be tolled during the time period a licensee is participating*
11 *in the diversion program.*

12 ~~SECTION 1. It is the intent of the Legislature to enact~~
13 ~~legislation establishing a periodic review of all state agencies.~~